

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-626-1999(O&M)

Reserved on:-22.5.2023

Date of Pronouncement:-26.5.2023

Jagir

...Appellant

Versus

Bachna (since deceased) through his legal heir

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rohit Johar, Advocate for
Mr.Sandeep Sharma, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly summed up, the facts of the case are that plaintiff Jagir son of Bishna, a resident of Nazafat Kalan, Tehsil Chhachrauli, District Yamuna Nagar had brought a suit against defendant Bachna son of Bishna, resident of his village, seeking a declaration that decree dated 12.5.1992 passed in Civil Suit No.382 of 24.4.1992 by the Court of Senior Sub Judge, Jagadhri is illegal, null and void not binding upon rights of the plaintiff.

2. As per the version of the plaintiff, defendant is his real

brother; the plaintiff is unmarried and issue-less besides being an illiterate person; the suit land is owned and possessed by him; the defendant represented to the plaintiff that he intended to raise a loan and for that purpose the suit land was required to be put as guarantee; the plaintiff believed such representation of the defendant and agreed to the same; the plaintiff accompanied by the defendant came to Court premises where the defendant procured his thumb impressions on blank papers on the pretext of those being loan papers, however, subsequently it came out that the defendant had made a misrepresentation to the plaintiff and rather procured a consent decree regarding the suit land from the plaintiff in his favour. According to the plaintiff, the said decree is illegal, null and void being result of fraud and misrepresentation and in violation of provisions laid down under Section 17 of the Indian Registration Act as well as under Section 54 of the Transfer of Property Act because the suit land was transferred in favour of the defendant without any consideration and the plaintiff never parted with the possession of the suit land. According to the plaintiff, he had requested the defendant to treat the impugned decree as null and void but to no effect, as such the plaintiff had filed the suit in question.

3. On getting notice, the defendant appeared and filed written statement contesting the suit denying that he had made any misrepresentation to the plaintiff or played fraud with him, rather he

contended that the decree was suffered by the plaintiff in favour of the defendant voluntarily out of free will because the suit property had fallen to the share of the defendant in a family settlement; the decree is not hit by Section 17 of the Indian Registration Act or Section 54 of the Transfer of Property Act. The defendant had raised legal objections that a simple suit for declaration is not maintainable and plaintiff was estopped by his act and conduct from filing the present.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the judgment and decree dated 12.5.1992 passed in Civil Suit NO.382/92 are null, void, illegal and obtained by fraud? If so, to what effect? OPP.

2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.

4. Whether the suit is liable to be dismissed with special costs? OPD.

5. Relief.

6. The parties were given opportunities to lead evidence in

support of their respective claims.

7. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Jagadhri vide judgment and decree dated 4.8.1997 decreed the suit of the plaintiff declaring the impugned judgment and decree to be illegal, null and void, ineffective qua rights of the plaintiff.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Yamunanagar, which was assigned to Additional District Judge, Jagadhri, who vide judgment and decree dated 27.1.1999 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

9. Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Jagadhri and he has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Jagadhri be set aside and the suit filed by him be decreed.

10. Notice of the appeal was given to the respondent/defendant, who was served and initially had put in appearance through counsel but subsequently such counsel stopped appearing in the Court.

11. I have heard learned counsel for the appellant besides

going through the record.

12. A perusal of the judgment passed by the trial Court goes to show that the same was result of inability to understand the factual position properly and to apply the law to a given situation in an appropriate manner. The trial Court by misappraisal of evidence and wrong interpretation of law had wrongly concluded that the impugned judgment and decree had been obtained by the defendant from plaintiff by misrepresentation and playing fraud. However, that wrong was undone by the learned Additional District Judge, Jagadhri, who by proper appraisal and appreciation of evidence and correct interpretation of law had observed that the plaintiff had failed to prove on record that the impugned judgment and decree suffered from any illegality or infirmity and there was no reason to set aside the same.

13. With regard to the decree being not registered, learned Additional District Judge, Jagadhri has observed that a compromise decree passed under Order 23 CPC or a decree passed on admission covered by Order 12 Rule 6 CPC would require registration if it was got passed as a device to avoid payment of stamp duty or to frustrate the law relating to registration, in case it creates rights for the first time in immovable property of the value of Rs.100/- or upwards. However, in the present case there was nothing on record to suggest that the decree required registration and that it did not fall in any of

the exceptions created in the judgment **Bhoop Singh Versus Ram Singh and others, AIR 1996 S.C. 196** by the Apex Court. Referring to extensively to the admissions made by the plaintiff in the cross examination when he got his statement recorded as PW1, Additional District Judge, Jagadhri has rightly come to the conclusion that the plaintiff had failed to prove that the impugned judgment and decree suffer from any legal defect.

14. The judgment passed by Additional District Judge, Jagadhri is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular second appeal.

15. No substantial question of law arises in this appeal.

16. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

26.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No